

**AMENDMENT NO. 1 TO  
AGREEMENT FOR DESIGN-BUILD-OPERATE-MAINTAIN SERVICES  
CONTRACT NO. CT-HRT-1200106 (formerly Contract No. CT-DTS-1100194)**

THIS AMENDMENT No. 1 to the AGREEMENT FOR DESIGN-BUILD-OPERATE-MAINTAIN SERVICES, Contract No. CT-HRT-1200106 (formerly Contract No. CT-DTS-1100194) (this "**Amendment No. 1**") is made and entered into effective as of ~~\_\_\_\_\_~~ **OCT 29 2012**, 2012, by and between HONOLULU AUTHORITY FOR RAPID TRANSPORTATION, a semi-autonomous agency of the City and County of Honolulu, whose principal place of business and mailing address is 1099 Alakea Street, Suite 1700, Honolulu, Hawaii 96813 ("**HART**"), and ANSALDO HONOLULU JV, a Hawaii general partnership, whose principal place of business and mailing address is 737 Bishop Street, Suite 2860, Honolulu, Hawaii 96813 ("**AHJV**").

**BACKGROUND**

WHEREAS, HART and AHJV entered into that certain Agreement for Design-Build-Operate-Maintain Services, Contract No. CT-DTS-1100194, which Contract No. was subsequently changed to Contract No. CT-HRT-1200106, dated November 28, 2011 (the "**Contract**");

WHEREAS, pursuant to Hawaii Revised Statutes ("**HRS**") Section 51-1 (1993), the City and County of Honolulu (the "**City**") is authorized to construct, extend, own, maintain, and operate mass transit systems on the island of Oahu;

WHEREAS, HART has been established pursuant to Article XVII of the Revised Charter of the City and County of Honolulu 1973, as amended ("**RCH**"), as a semi-autonomous public transportation authority of the City with the authority to develop, operate, maintain, and expand the City's fixed guideway mass transit system (the "**Rail Project**");

WHEREAS, RCH Section 16-129.2 provides that all lawful obligations owed by or to the City relating to the City's fixed guideway mass transit system on June 30, 2011 shall remain in effect on July 1, 2011, and that such obligations and liabilities shall be assumed by HART;

WHEREAS, pursuant to RCH Section 17-104, there shall be an executive director of HART (the "**HART Executive Director and CEO**"), who is appointed by the board of HART;

WHEREAS, Act 131 was signed into law by the Governor of the State of Hawaii on June 16, 2011, and amended the Hawaii State Procurement Code to provide HART with procurement authority and to designate the director of HART as the chief procurement officer for HART;

WHEREAS, pursuant to Act 131, HART adopted that certain Resolution No. 2011-3, dated July 1, 2011 ("**Resolution**"), whereby HART resolved that the HART Executive Director will serve as HART's Chief Procurement Officer;



WHEREAS, the Contract provides that references to the “City,” the “City and County of Honolulu,” the “Rapid Transit Division,” and “RTD” in the Contract are to be replaced with “HART.”;

WHEREAS, the Contract was drafted prior to the enactment of Act 131 and prior to adoption of the Resolution;

WHEREAS, the Contract provides that the “Chief Procurement Officer” and the “Contracting Officer” shall be the Director of the Department of Budget and Fiscal Services of the City and County of Honolulu;

WHEREAS, the Contract provides that the “Contract Administrator” is the Second Deputy Director of the Department of Transportation Services;

WHEREAS, the Contract provides that the “Officer-in-Charge” shall be the Director of the Department of Transportation Services or the department head of the agency with delegated authority for which construction is being procured or the Officer-in-Charge’s delegated designee;

WHEREAS, pursuant to Act 131, the Resolution, and the language in the Contract, it was the intent of the parties to the Contract that HART would have the authority to make determinations with respect to the Contract and that the HART Executive Director and CEO would serve as HART’s Chief Procurement Officer, Contracting Officer, Contract Administrator, and Officer-in-Charge; and

WHEREAS, the parties to the Contract desire to amend the Contract to be in accordance with the intent of the parties, Act 131, and the Resolution.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree to amend the Contract as follows:

## **AGREEMENT**

1. Chapter SP-1 DEFINITIONS; REFERENCES; REPRESENTATIONS, SP-1.1 DEFINITIONS, “Chief Procurement Officer.” The definition of “Chief Procurement Officer” shall be deleted in its entirety and replaced with the following language:

“Chief Procurement Officer” means the HART Executive Director and CEO or designee.

2. Chapter SP-1 DEFINITIONS; REFERENCES; REPRESENTATIONS, SP-1.1 DEFINITIONS, “Contract Administrator.” The definition of “Contract Administrator” shall be deleted in its entirety and replaced with the following language:



“Contract Administrator” means the HART Executive Director and CEO or designee.

3. Chapter SP-1 DEFINITIONS; REFERENCES; REPRESENTATIONS, SP-1.1 DEFINITIONS, “Contracting Officer.” The definition of “Contracting Officer” shall be deleted in its entirety and replaced with the following language:

“Contracting Officer” means the HART Executive Director and CEO or designee.

4. Chapter SP-1 DEFINITIONS; REFERENCES; REPRESENTATIONS, SP-1.1 DEFINITIONS, “Designee.” The definition of “Designee” shall be deleted in its entirety and replaced with the following language:

“Designee” means a person appointed by the HART Executive Director and CEO to act on its behalf with delegated authority.

5. Chapter SP-1 DEFINITIONS; REFERENCES; REPRESENTATIONS, SP-1.1 DEFINITIONS, “Officer-in-Charge.” The definition of “Officer-in-Charge” shall be deleted in its entirety and replaced with the following language:

“Officer-in-Charge” means the HART Executive Director and CEO or designee.

6. HART Executive Director and CEO. The term “HART Executive Director and CEO” shall be substituted for the “Director of BFS,” “Director of Department of Budget and Fiscal Services,” “Director of DTS,” “Director of the Department of Transportation Services,” or “Second Deputy Director of the Department of Transportation Services,” wherever those terms appear in the Contract Documents, unless the context clearly indicates otherwise.

7. Ratification. All terms and conditions of the Contract, not inconsistent with the terms and conditions of this Amendment No. 1, are herein incorporated and shall remain in full force and effect.


8. Conflict or Inconsistency. In the event of any conflict or inconsistency between the provisions of this Amendment No. 1 and any provisions of the Contract, the provisions of this Amendment No. 1 shall govern in all aspects.

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IN WITNESS WHEREOF, HART and AHJV have executed this Amendment No. 1 by their duly authorized officers or agents on the day and year first above written.

HONOLULU AUTHORITY FOR  
RAPID TRANSPORTATION

  
By: Daniel A. Grabauskas  
Title: Executive Director and CEO  
Honolulu Authority for Rapid  
Transportation

ANSALDO HONOLULU JV,  
a Hawaii general partnership

  
By: Enrico Fontana  
Title: Managing Director

APPROVED AS TO FORM AND  
LEGALITY:

  
Deputy Corporation Counsel



## CONTRACTOR'S ACKNOWLEDGMENT

## NOTARY CERTIFICATION

